

APPENDIX II:

**UNIVERSITY OF ARIZONA
RESPONSE TO PUBLIC COMMENTS**

General Comments from Public Comment Period February 11, 2017 through March 12, 2017

A number of common themes ran through the responses:

1. The Arizona State Museum (ASM) is not funded by the State to provide mandated services.

The proposed new rates and fees are based solely on the known and identifiable costs of providing mandated services, in keeping with statutory requirements under ARS § 41-844(I) as well as Arizona Board of Regents (ABOR) Policy 8-205(I)(1), independent of the sources or amounts of revenue. Neither present nor past funding of ASM has any bearing on the calculation of costs and the associated rates for the provision of mandated cultural resource management services because ARS 41-844(I) requires the project sponsor to bear all costs and the university is prohibited from subsidizing (gifting) industry per Article 9, Section 7 of the Arizona State Constitution.

2. It will be difficult for Cultural Resource Management (CRM) firms and project proponents to estimate costs associated with archaeological compliance work before the work is completed and the proposed new fee and rate structure will introduce additional uncertainty.

The proposed rate structure was developed to be responsive to stakeholders who have expressed the need to establish a rate and fee structure that is scalable to each project's scope and requirements. CRM firms and project proponents are encouraged to contact ASM early in the project planning process. ASM will work with CRM firms and project proponents to adjust business practices in order to produce estimated costs for projects.

3. ASM should provide a guide regarding the estimate process.

ASM staff will work closely with CRM firms on the process of estimating project costs. ASM will develop an Estimate Request Questionnaire, which will function as a guide describing project scope and will elicit from CRM firms the information needed to provide timely project estimates that are as accurate as possible. Estimates will be based on all relevant factual information provided in this questionnaire.

4. The proposed new fee and rate structure does not adequately address certain realities of the CRM business model, i.e., how costs are invoiced by CRM firms and reimbursed by project proponents.

ASM's proposed new fee and rate structure is responsive to changing legislative requirements and stakeholder input, and required substantial changes in ASM's business model as well. Although the CRM business model is outside of ASM's purview, ASM is pleased to work with CRM firms on the estimation process, as described above, to assist them in their own business planning.

5. The proposed new fee and rate structure will have unintended consequences, including pressure toward more in-field analysis versus artifact recovery and curation, less excavation and

smaller excavation samples, unsystematic and illegal culling of collections before curation in order to save money on a per-box basis, non-compliance with the Arizona Antiquities Act and the state's human burial protection laws as project proponents seek to avoid costs (e.g., proponents will illegally “walk away from” curation costs at end of project as it will be “too costly to comply”), decreased leasing and sale of Arizona State Trust Lands, “low-balling” (i.e., the submission of unrealistically low bids to secure contracts), and “legislative backlash” (i.e., the state legislature will weaken cultural resource protection laws). Given these unintended consequences, ASM should develop policies for culling, make allowances for situations in which proponents cannot afford curation or the full costs of curation, and should postpone implementation of new rates and fees until these issues are addressed.

The proposed new rate and fee structure was designed to ensure that ASM recovers all costs associated with providing mandated services as required by statute. Furthermore, most of the potential unintended consequences envisioned by respondents assume that project proponents, landowners, and/or cultural resource management (CRM) firms will engage in behaviors that are legally prohibited (under ARS § 41-841 et seq. and § 41-865) and/or contrary to extant rules and policies (ABOR Policy Manual Chapter 8; ASM Repository Manual). Changes in ASM’s rates and fees are consistent with existing law, rules, or policies that pertain to these entities. All individuals and entities operating within Arizona, including project proponents, landowners, CRM firms and the University of Arizona are required to comply with the law, including the state constitution, independent of ASM’s proposed new rate and fee structure. State law and the Arizona constitution require that ASM recover from project proponents all costs associated with providing mandated services. Furthermore, they prohibit the project proponents and CRM firms from culling and discarding portions of collections acquired under the authority of an Arizona Antiquities Act permit.

6. The ASM should engage in government-to-government consultation with Arizona tribal communities regarding the proposed new fee and rate structure.
7. The Salt River Pima-Maricopa Indian Community requested formal consultation on this subject, pursuant to Arizona Executive Order 2006-14, and other respondents asked if such consultations were already underway. The University of Arizona and ASM appreciate value the importance of consultation and are committed to maintaining strong working relationships with Arizona’s tribal communities. As such, tribal representatives were invited to and attended the two stakeholder briefings that were held on September 20, 2016 and December 12, 2016. It is important to note that government-to-government consultation regarding this matter is not required under ARS § 15-1631 (as amended), Arizona Executive Order 2006-14, or ABOR Policy 1-118 (Tribal Consultation). ASM engages in ongoing, mutual dialogue with individual tribes and multi-tribe entities (such as the Four Southern Tribes Cultural Resources Working Group and the Western Apache NAGPRA Working Group), in part through the museum’s Southwest Native Nations Advisory Board (SWNAAB). SWNNAB includes up to two representatives from each of the 22 federally recognized tribes in Arizona and meets twice a year to provide the museum with guidance and feedback on repatriation and other issues among ASM and tribal partners.

ASM will work through SWNNAB to initiate discussion on ways to assist and encourage compliance with the ARS § 41-841 et seq. and § 41-865, and will address the acquisition and preservation fund established under ARS § 41-865, with the goals of encouraging donations to the fund and developing an application process for disbursements from it. The notice of intent is lacking in the quality and the amount of supporting data presented.

ASM has provided all of the information, justifications, methodologies, and rationale required by ARS § 15-1631, as amended by SB 1418.

8. ASM should have its operations audited by an outside entity to evaluate its efficiency.

The University of Arizona (UA) and the office for Research, Discovery & Innovation (RDI) are committed to effective and efficient operations for all reporting units. UA has an internal audit department that routinely reviews university departments. A non-ASM employee (a Research Business Analyst for Core Facilities) developed the proposed new rate and fee structure and gathered the data used to produce it, in accordance with commonly accepted business standards, designed intentionally to ensure the independence of the process. As a part of the data gathering, ASM's operations also were reviewed independently by the Research Business Analyst and recommendations were made to RDI leadership to implement improvements in order to maximize efficiencies. These were adopted or are in process (e.g., the purchase and use of laboratory time-management software). Finally, the proposed rate and fee structure was reviewed independently by UA's Financial Services Office (FSO) and FSO approved of the included costs and the methodology used to develop it.

9. ASM appears to engage in duplicative effort relative to tasks required of CRM firms who submit materials for curation.

ASM does not perform the same tasks required of those submitting collections for curation. ASM, as a public repository pursuant to ABOR Policy 8-204(H), has the following responsibility:

All specimens and records resulting from the permitted activity must be accessioned, inventoried, and fully documented by the repository. Accession and catalog records are considered to be part of the records that must be permanently preserved.

10. ASM's proposed new fees and rates are substantially higher than those charged by comparable institutions.

More than one respondent expressed this, and one referred to a national study of curation fees conducted by National Park Service personnel. As stated in the notice, ASM is legally required to recover from the project sponsor all costs associated with providing mandated services. Just as property, motor vehicle, and sales taxes vary between cities, counties, and states, so do institutional costs and revenue streams, as well as state laws and regulations that guide those institutions. ASM is not privy to the financial information of other institutions.

We would note that one of the findings of this National Park Service study is that archaeological repositories around the country are raising fees precisely because they are not covering costs, especially the costs of curating collections in perpetuity.

11. ASM should consider "phasing-in" rate and fee increases.

There is no source of funding to defray the differential between actual costs incurred throughout this "phase-in" period and costs recovered.

Specific Comments

The following comments were made by only one, or in some cases, two respondents:

1. There is no assurance that funds received by ASM for in-perpetuity care of collections will be used for that purpose.

Funds received through the new proposed rate and fee structure will be restricted by the University of Arizona to the in-perpetuity care of the collections. The office for Research, Discovery & Innovation has administrative and financial oversight over ASM and will ensure that funds will be restricted to this purpose only.

2. ASM should be required to issue binding estimates rather than non-binding estimates.

ASM will work with CRM firms to ensure that project estimates are as accurate as possible relative to actual project costs, using a detailed questionnaire that will specifically detail the project scope. The accuracy of project estimates will be dependent upon the quality of information received by ASM. Binding estimates would have the effect of shifting costs between project sponsors similar to the former task-based rates. The new rate and fee setting process assigns the total actual costs to the project sponsor.

3. ASM should, when possible, commingle materials from small projects in order to save space and funds and to reduce charges.

The unit bases in the rate and fee structure have been reduced in this revised notice in response to the input of respondents. The half-box will be used as a minimum billing unit in situations where ASM deems appropriate, as subdividing a box into two equal parts can be accomplished in a straightforward manner.

4. ABOR is required to set aside sufficient space for the ASM.

ABOR is required to set aside sufficient space for ASM and for all of its authorized programs and units. There is, however, no requirement that ABOR provide space at no cost. State law requires ASM to recover the costs incurred in the provision of mandated cultural resource management services, under ARS § 41-841 et seq. and § 41-865, to

non-University of Arizona entities requiring these services (i.e., persons, corporations, institutions, state agencies other than UA, and federal agencies), which includes costs pertaining to space.

5. Mandated services performed by ASM might be considered part of ASM's educational mission as part of the University of Arizona.

Mandated services are clearly defined under ARS § 41-841 et seq. and 41-865, as well as ABOR Policy Manual 8, and are not considered part of the educational mission of the University of Arizona. Educational activities are separately budgeted and accounted for by the University of Arizona.

6. ASM should price-fix with other repositories.

The University, ASM, and ABOR will not engage in any activities that may be illegal, including collusion and price-fixing, related to fees and costs that are determined through legally appropriate mechanisms and processes.

7. One respondent wished to “strongly discourage ASM from charging for review of and commenting on document submissions,” adding that “ASM should adopt and publish a minimally adequate standard and not request document edits when a state agency with the statutory authority to determine document adequacy has already done so.”

ABOR Policy No. 8-202(B)(2)(h) states, “...For any project, the Director may require a more detailed research design, plan of work, or project budget.” In addition, ABOR Policy No. 8-203, Conditions for Work Under Permits, specifies in detail the standards for research plans and also reports of activities conducted under an Arizona Antiquities Act permit. ASM is required to ensure that these documents meet these standards. Further, project proponents are not charged for the costs associated with such reviews, as ASM is prohibited from recovering the costs related to the issuance of permits.

8. ASM should move to "all digital" submission of documents and curation thereof.

ASM is required, under state and federal law, to curate the original, paper versions of the documents it currently cares for and has invested in infrastructure appropriate to this task. Moving to an all-digital system for new submissions would require significant investments in new infrastructure, increasing costs, both for ASM and for project proponents. Furthermore, there is no national, industry-wide consensus regarding digital curation standards at this time (e.g., archival digital document file formats).

9. Tasks will cost more or less depending upon the personnel assigned. Can't work-study students do much of this work?

As discussed in the draft Notice, ASM is subject to many regulations that dictate services to be provided, professional standards by which they must be provided, for which service charges may be assessed, and even who must bear the burden of the costs of such services. This regulatory framework includes:

- Curation of Federally Owned and Administered Archeological Collections, 36 CFR 79;
- State law, including but not limited to ARS §§ 15-1631, 41-865 and 41-841, et seq.;
- ABOR Policy, including but not limited to 8-101 through 8-110 and 8-201 through 8-207; and
- Professional Standards as set out by the American Alliance of Museums.

The ASM Director and professional staff are responsible for determining the appropriate staff classification for completion of a given task in order to ensure compliance with the aforementioned obligations and standards. Because our goals are to serve our stakeholders efficiently and to keep costs as low as possible, much of the day-to-day, hands-on work is indeed performed by lower-cost employees, and then reviewed by senior personnel to ensure compliance with the statutory obligations and professional standards previously mentioned. However, there are certain activities (e.g., those that require more training or experience to conduct) that entail the direct effort of professional staff.

ASM, as part of the University of Arizona, is able to leverage the expertise of its faculty and staff in archaeology and museum conservation such that only a fraction of each highly trained professional's effort is expended in supervising lower-cost employees who complete the great majority of the tasks required for mandated cultural resource management services.

10. The notice indicates no impact on the state's general fund, but costs are being passed down to local governments and state agencies.

The fees and rates are solely cost-based and borne by project sponsors. Therefore, there is no anticipated impact on the State's general fund.

11. Are there different rates and fees for field schools or other educational projects (aside from compliance-driven projects)? Might ASM develop a "government rate?"

The project sponsor is required to bear the costs of mandated services, regardless of the type of project proponent. If such a "government rate were instituted, unrecovered costs associated with projects sponsored by government entities would be subsidized by other project proponents (e.g., private developers, utility companies) or by gifting State Funds allocated for educational purposes. Neither of these courses of action is permissible.

12. The process of developing the proposed rate and fee structure was not independent of ASM.

As discussed above, a Research Business Analyst for Core Facilities assigned to the University of Arizona's (UA) office for Research, Discovery & Innovation developed the proposed new rate and fee structure and gathered the data used to produce it. This individual is not an ASM employee. Furthermore, the methodology used was vetted and approved independently by the UA Financial Services Office.

13. ASM appears to be billing new project proponents for work on old collections.

Although ASM has historically under-recovered costs associated with providing mandated services, including curating collections and associated records in perpetuity, the proposed new rate and fee structure only generates funds for services to be provided in association with *new* projects. The proponents of new projects will not be charged additional funds in order to recover costs associated with past projects.

14. There is a lack of clarity regarding the roles of the ASM Archaeological Records Office and AZSITE, as well as which entity receives fees for mandated services.

AZSITE is a program of the AZSITE Consortium, an entity established by Arizona Executive Order 2006-3 as the decision making and planning body within the Executive Branch for the AZSITE database and GIS inventory of Arizona's historical and archaeological properties. Members of the consortium include ASM, Arizona State University's School of Human Evolution and Social Change, the State Historic Preservation Office, and the Museum of Northern Arizona. The consortium exists outside of ARS § 41-841 et seq. and § 41-865, and therefore, outside the legal framework under which ASM provides mandated services. Although the AZSITE Database Manager is employed by the University as part of ASM, the costs of this position are funded entirely by AZSITE subscriptions and contracts, and not by mandated programs fees (i.e., fees used to recover costs associated with providing services pursuant to ARS § 41-841 et seq. and § 41-865).

15. There are questions regarding the percentage of the ASM budget devoted to mandated programs as opposed to other programs and how much mandated programs fees contribute to the overall ASM budget.

Arizona law requires that the *costs* of mandated cultural resource management services be borne by the related project sponsor. Therefore the proposed fees and rates are based on the known costs of providing these services, regardless of other sources of funding provided to ASM for its other activities, including education, research and outreach. The revenues within the section of ASM that provides mandated cultural resource management services must fully defray the costs of providing these services both in the current year and in years to come.

16. The proposal appears to meet the needs of a narrow set of project proponents such as utility companies (i.e., those who mostly require services related to monitoring and testing projects which produce little in the way of collections and documentation) and imposes an undue burden on other project proponents (i.e., those who require services related to large-scale excavation projects which produce large collections and voluminous documentation).

The proposed new rate and fee structure is based on a comprehensive analysis of all costs incurred in the provision of all mandated services, regardless of the type or the size of the project or the nature of the particular project proponent. Rates and fees are driven by costs, and the new structure is more equitable and scalable by distributing

costs in direct proportion to the project scopes that incur them, in comparison to the old rate and fee structure.

17. Why won't ASM allow project sponsors to combine permits on large jobs?

This question reflects a misunderstanding of ASM's role in cultural resource management relative to other entities, under both state and federal law. Theoretically, if multiple project sponsors are involved in a project that (1) involves the exact same area of potential effect (APE), (2) the exact same set of adverse effects within that APE, (3) have consulted jointly with the State Historic Preservation Office (SHPO) and/or a Tribal Historic Preservation Office(s) (THPO), and (4) have retained the same cultural resource management firm to conduct research under a single, integrated historic properties treatment plan, a single permit can be sought and issued. The decisions in this hypothetical sequence do not involve ASM, but rather involve land-managing agencies (state and/or federal) as well as SHPO and/or THPO(s). These are the entities that determine whether projects represent undertakings (federal law) or state action/assistance (state law) and they direct or facilitate the process of identifying areas of potential effect, adverse effects, and mitigation strategies. It is not until these decisions have been made that ASM receives a permit application for a particular project.

18. There seems to be misunderstanding regarding the tasks related to project registration. One respondent wonders why ASM must expend so much effort in this area, assuming that cultural resource management (CRM) firms submit the required information in ASM Project Registration Forms.

As detailed in the Notice, the tasks that ASM performs for mandated services go far beyond reviewing information submitted by project proponents or their agents.

19. One respondent asks why, on average, the costs associated with registering a monitoring project will be less than the costs of registering a testing or excavation project, given that the listed tasks are the same.

On average, more time is required to complete these tasks when the project involves testing or excavation in comparison to monitoring. Part of the difference involves accepting delivery of collections and associated records from testing or excavation projects. The volume of material (boxes) to be received (checked in as boxes; not conducting an inventory of their contents, as inventory is a Collections Intake task) is much greater for testing and excavation projects than for monitoring projects.

20. ASM, rather than promoting scientific investigation has moved toward emphasizing compliance with regulations.

The mission of ASM, as an anthropology museum, is to preserve, create, and share knowledge about the peoples and cultures of Arizona and surrounding regions. ASM is

committed to scientific investigation. ASM, as well as the University and ABOR, must also comply with regulations issued by governing agencies, as well as state and federal laws. The proposed fee and rate schedule was developed in compliance and accordance with Arizona state law.

21. ASM should spread curation costs across all projects.

The average-cost model was abandoned based on stakeholder requests for more scalability in rates and fees related to the large disparity in scope and time to complete various projects. Please see the Notice of Intent, Background and Facts, Item 3.

22. ASM should charge a penalty for non-compliant submissions.

Rather than assessing a penalty for non-compliant submissions, ASM will invoice for service delivery and recover the actual costs of services provided by ASM staff to bring collections into compliance.